
HOUSE BILL No. 1349

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-19-3-2.5; IC 34-13-7.

Synopsis: Litigation by inmates. Provides that before filing a civil rights action or tort claim action against a public employee or government entity, an offender must submit certain documentation to the court. Prohibits an offender from bringing a civil action or appealing a judgment in a civil action or proceeding if the offender has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court that was dismissed on the grounds that it was frivolous or malicious or failed to state a claim upon which relief may be granted, unless the offender is under imminent danger of serious physical injury.

Effective: July 1, 2004.

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January 15, 2004, read first time and referred to Committee on Appointments and Claims.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1349

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-19-3-2.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2.5. (a) As used in this
3 section, "offender" means a person ~~confined by the department of~~
4 ~~correction:~~ **incarcerated or detained in any facility who is accused**
5 **of, convicted of, sentenced for, or adjudicated delinquent for:**

6 (1) **a crime (or in the case of a child, an act that would be a**
7 **crime if committed by an adult); or**

8 (2) **the violation of the terms and conditions of parole,**
9 **probation, pretrial release, or a diversionary program.**

10 (b) When an offender commences ~~an a civil~~ action or a ~~proceeding~~
11 **an appeal** without paying fees or other court costs under section 2 of
12 this chapter, the offender shall obtain from the appropriate official of
13 the correctional facility or facilities at which the offender is or was
14 confined, a certified copy of the ~~prisoner's~~ **offender's** trust fund
15 account statement for the six (6) months immediately preceding
16 submission of the complaint or petition. The offender shall file the trust
17 fund account statement in addition to the statement required under

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1 section 2 of this chapter.

2 (c) The offender shall pay a partial filing fee that is twenty percent
3 (20%) of the greater of:

4 (1) the average monthly deposits to the offender's account; or

5 (2) the average monthly balance in the offender's account;

6 for the six (6) months immediately preceding the filing of the
7 complaint or petition. However, the fee may not exceed the full
8 statutory fee for the commencement of actions or proceedings.

9 (d) If the offender claims exceptional circumstances that render the
10 offender unable to pay the partial filing fee required by this section, in
11 addition to the statement required by section 2 of this chapter and the
12 statement of account required by subsection (b), the offender shall
13 submit an affidavit of special circumstances setting forth the reasons
14 and circumstances that justify relief from the partial filing fee
15 requirement.

16 (e) If the court approves the application to waive all fees, the court
17 shall give written notice to the offender that all fees and costs relating
18 to the filing and service will be waived. If the court denies the
19 application to waive all fees, the court shall give written notice to the
20 offender that the offender's case will be dismissed if the partial filing
21 fee is not paid within forty-five (45) days after the date of the order, or
22 within an additional period that the court may, upon request, allow.
23 Process concerning the offender's case may not be served until the fee
24 is paid.

25 **(f) An offender may not appeal a judgment in a civil action or**
26 **proceeding if the court certifies in writing that it is not taken in**
27 **good faith.**

28 **(g) The court shall dismiss a civil action or an appeal of a**
29 **judgment in a civil action or proceeding by an offender at any time**
30 **if the court determines that:**

31 **(1) the allegation of poverty is untrue; or**

32 **(2) the action or appeal is frivolous, is malicious, fails to state**
33 **a claim upon which relief may be granted, or seeks monetary**
34 **relief against a defendant who is immune from such relief.**

35 **(h) An offender may not bring a civil action or appeal a**
36 **judgment in a civil action or proceeding under this section if the**
37 **offender has, on at least three (3) prior occasions, while**
38 **incarcerated or detained in any facility, brought a civil action or an**
39 **appeal of a judgment in a civil action or proceeding in a court of**
40 **the United States that was dismissed on the grounds that it was**
41 **frivolous or malicious or failed to state a claim upon which relief**
42 **may be granted, unless the offender is under imminent danger of**

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serious physical injury.

(i) The court shall review, before docketing, a complaint in a civil action in which an offender seeks redress from a governmental entity or an officer or employee of a governmental entity.

(j) Upon review, the court shall identify cognizable claims or dismiss the complaint, or any part of the complaint, if the complaint or part of the complaint:

(1) is frivolous or malicious or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from that relief.

SECTION 2. IC 34-13-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 7. Commencement of Action Against Public Employees and Government Entities by Offender

Sec. 1. (a) In addition to any other requirements under law, before filing a civil rights action or tort claim action against a public employee or government entity, an offender must submit to the trial court:

(1) a copy of the complaint the offender wishes to file;

(2) a list of all cases previously filed by the offender involving the same, similar, or related cause of actions; and

(3) a copy of all relevant documents pertaining to the ultimate disposition of each previous case filed by the offender against any of the same defendants in a state or federal court. The relevant documents include:

(A) the complaint;

(B) any motions to dismiss or motions for summary judgment filed by the defendants in the actions;

(C) the state or federal court order announcing disposition of the case; and

(D) any opinions issued in the case by any appellate court.

(b) An offender must file with the court a brief that includes:

(1) a legal argument;

(2) a citation to authority; and

(3) an explanation to the court why the new action is not subject to dismissal as a matter finally decided on its merits by a court and not subject to litigation again between the same parties.

(c) If the trial court determines that the complaint is frivolous,

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1 malicious, or otherwise utterly without merit, or fails to state a
2 claim upon which relief may be granted, the court shall dismiss the
3 complaint.

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